

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
3:09cv104-V
(3:06cr45-1-V and 5:05cr32-3-V)**

TONY WELLS,)
Petitioner,)
v.) **ORDER**
UNITED STATES OF AMERICA,)
Respondent.)

THIS MATTER comes before the Court on Petitioner's Request for a Certificate of Appealability (Doc. No. 12).

On March 15, 2009, Petitioner filed a Motion under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence, by which he raised challenges to his sentence and alleged that he had been subjected to prosecutorial misconduct and ineffective assistance of counsel. (Doc. No. 1). On July 15, 2009, Respondent filed an Answer arguing that Petitioner was not entitled to any relief on his various claims, and filed a Motion for Summary Judgment seeking a summary dismissal of Petitioner’s case. (Doc. Nos. 5 and 6, respectively). On August 3, 2009, Petitioner filed a Response in opposition to Respondent’s Motion for Summary Judgment. (Doc. No. 7). However, such Response failed to address the crux of Respondent’s various arguments in favor of summary judgment. On March 30, 2011, the Court entered an Order reflecting its conclusion that Petitioner’s challenges to his sentence all were foreclosed by the Fourth Circuit’s resolution of certain claims that were raised in his direct appeal. (Doc. No. 10 at 9-10). Such Order further

reflects the Court's conclusion that Petitioner's claim of prosecutorial misconduct was factually baseless, and that his allegations of ineffective assistance of counsel were subject to dismissal for his failure to demonstrate deficient performance and/or prejudicial result. (Id. at 12-22).

Accordingly, the Court's Order granted Respondent's Motion for Summary Judgment and dismissed Petitioner's Motion to Vacate. (Id. at 22).

By the instant Request, Petitioner asks the Court to issue a certificate of appealability because "other jurists would have found the issues debatable." However, the Court has reviewed the record of this matter and determined that Petitioner has not made a substantial showing of a denial of a constitutional right. 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 336-38 (2003) (in order to satisfy § 2253(c), a petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong) (citations omitted). Moreover, the Court finds that Petitioner has failed to demonstrate both that this Court's dispositive procedural rulings are debatable, and that his Motion to Vacate states a debatable claim of the denial of a constitutional right. Slack v. McDaniel, 529 U.S. 473, 484-85 (2000). As a result, the Court declines to issue a certificate of appealability. Rule 11(a), Rules Governing Section 2255 Proceedings for the United States District Courts.

NOW, THEREFORE, IT IS ORDERED that Petitioner's Request for a Certificate of Appealability (Doc. No. 12) is **DENIED**.

SO ORDERED.

Signed: September 7, 2011



Richard L. Voorhees
United States District Judge

